REMARKS

In response to the Office Action dated July 7, 2003, claims 1, 4, 10 and 11 are amended. Claims 1-5, 10 and 11 are now active in this application. No new matter has been added.

AMENDMENTS TO CLAIMS

Claims 1, 4, 10 and 11 are amended to provide better form (e.g., changing "shooting" to "capturing" and "entering" to "inputting", and eliminating unnecessary language such as "input at said step of entering...") and not to change the scope thereof.

REJECTION OF CLAIMS UNDER 35 U.S.C. § 102 AND § 103

I. Claims 1, 2, 10 and 11 are rejected under 35 U.S.C. § 102(e) as being anticipated by Murata et al. (USPN 5,818,457).

The rejections are respectfully traversed.

The Examiner maintains that Murata et al. discloses "a landmark amount input unit to input a landmark amount of an object image included in an input image" in figs. 1, 9c and 14, 20 and 2, and at column 3, lines 12-26. However, the subject matter identified by the Examiner refers to displayed items/data/characteristics that have been stored and from which the user selects data/characteristics to create a face image.

In the face image creation device disclosed by Murata et al., when the cursor 3 is operated to designate face characteristic data, and the age data input switch 5 is operated to input age data, for example, on thirty years of age, a part pattern corresponding to the age data on the thirty years is selected for each of the parts of the face from among the part patterns in the part pattern ROM 7A, and a face image composed of a combination of the selected part patters is created (see column 13,

lines 53-62 of Murata et al.). An object of the invention disclosed by Murata et al., is to provide a face image creation device capable of creating a face image similar to the target face (see column 1, lines 21-23 of Murata et al.).

As is clear from the above, the subject matter of Murata et al. is to create a face image similar to a target face by combining the selected part patterns. An input image is not needed in the face image creation device disclosed by Murata et al. Accordingly, Murata does not disclose or suggest inputting of the landmark amount of an object image included in an input image, as recited in claims 1, 10 and 11 of the present application.

Furthermore, Murata et al. does not disclose or suggest inputting of an image pickup condition of capturing the input image, as recited also in claims 1, 10 and 11 of the present application, since capturing of the input image is not needed in the face image creation device disclosed by Murata et al., as mentioned above. Moreover, Murata et al. does not disclose or suggest forming an image space by applying a statistical method on a plurality of the landmark amounts and a plurality of image pickup conditions, as recited in claims 1, 10 and 11, since Murata et al. does not disclose or suggest inputting of a landmark amount of an object image included in an input image, as well as inputting of an image pickup condition of capturing the input image, as recited in claims 1, 10 and 11 of the present application.

Therefore, independent claims 1, 10 and 11, as well as claim 2 depending from claim 1, are patentable over Murata et al., and their allowance is respectfully solicited.

II. Claims 3-5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Murata et al. in view of Chen et al. (USPN 5,969,721). As to claims 3 and 5, the Examiner admits that Murata et al. does not explicitly mention the texture and depth data, but relies upon Chen et al. to disclose "gray

level data of the texture (color data) and depth data (range data or z-axis data) for forming 3D face image" in an analogous environment. As to claim 4, the Examiner admits that both Murata et al. and Chen et al. do not mention setting up the brightness of illumination during shooting. However, the Examiner takes Official Notice that this feature is notoriously well known in the art. Thus, the Examiner contends it would have been obvious to one of ordinary skill in the art to use the scheme of setting up illumination in the method of Murata et al. in order to generate a realistic face image.

The rejections are respectfully traversed, as claims 3-5 depend from claim 1, which is patentable over Murata et al. Therefore, claims 3-5 are patentable over Murata et al. also, even when considered in view of Chen et al.

Furthermore, claim 3 recites that the plurality of landmark amounts input through the landmark amount input unit include a plurality of grey-level values of texture of said object image, and claim 4 recites that the image pickup condition input through the image pickup condition input unit includes brightness of illumination during shooting.

As to claim 3, grey-level refers to discrete shades of grey (of pixels) of an image. The discreet shades vary between black and white. In contrast, Chen et al. refers to color data, which is different from grey-level values. Thus, Chen et al. does not disclose or suggest that the plurality of landmark amounts input through the landmark amount input unit include a plurality of grey-level values of texture of the object image.

With regard to the Examiner's taking Official Notice that setting up the brightness of illumination during shooting is notoriously well known in the art (claim 4), it is stressed that the fact that it may be generally known to set up the brightness of illumination in the general context of "shooting" does not necessarily render the now claimed subject matter as a whole obvious within the meaning of 35 U.S.C. § 103. Clearly, the Examiner has not factually established the requisite

prospective motivation to support a ***prima facie*** case of obviousness under 35 U.S.C. § 103. ***In re Deuel***, 51 F.3d 1552, 34 USPQ2d 1210 (Fed. Cir. 1995); ***Uniroyal, Inc. v. Rudkin-Wiley Corp.***, 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988).

Furthermore, even if setting up the brightness of illumination during shooting is notoriously well known, the Examiner has not offered any evidence as to why this would realistically impel a person of ordinary skill in the art to take this knowledge and use it as a basis to modify Murata et al. to achieve a realistic objective. On the contrary, given the fact that Murata et al. is concerned with creating a face using (stored) data/characteristics selected by a user, there is no need for an input image and consequently, no need to have brightness of illumination during shooting of the (nonexistent) input image as an image pickup condition that is input by the image pickup condition input unit.

Finally, if the Examiner persists in the rejection of claim 4, it is respectfully requested that he cite a reference that shows using setting up the brightness of illumination during shooting, make the factual inquiries mandated by ***Graham v. John Deere Co.***, 86 S.Ct. 684, 383 U.S. 117, 148 USPQ 459, 469 (1966), and then explain how and why one having ordinary skill in the art would have been led to modify Murata et al. (using the teaching in the cited reference) to arrive at the claimed invention. In this regard, Applicant wishes to note that the Federal Circuit has decided that the mere assertion by an Examiner/Board that something is of "common knowledge", without any objective evidence in the record, is improper as lacking substantial evidence support. See ***In re Zurko***, 258 F.3d 1379, 59 USPQ2d 1693 (Fed. Cir. 2001) and ***In re Lee***, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002).

Thus, claims 3-5 are patentable over Murata et al. and Chen et al., considered alone or in combination. Consequently, the allowance of claims 3-5 are respectfully traversed.

CONCLUSION

Accordingly, it is urged that the application, as now amended, is in condition for allowance, an indication of which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, Examiner is requested to call Applicants' attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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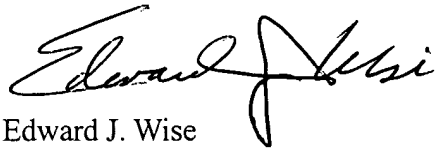

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